



General Assembly

Substitute Bill No. 5073

February Session, 2012

* ____HB05073BA____031612____ *

**AN ACT CONCERNING REVISIONS TO CONNECTICUT'S MODEL
ENTITY TRANSACTIONS ACT AND THE CONNECTICUT BUSINESS
CORPORATION ACT.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 33-819 of the 2012 supplement to
2 the general statutes, as amended by section 38 of public act 11-241, is
3 repealed and the following is substituted in lieu thereof (*Effective*
4 *January 1, 2014*):

5 (a) After a plan of merger or share exchange has been adopted and
6 approved as required by sections 33-600 to 33-998, inclusive, a
7 certificate of merger or share exchange shall be [executed] signed on
8 behalf of each party to the merger or the share exchange by any officer
9 or other duly authorized representative of such party. The certificate of
10 merger or share exchange shall set forth: (1) The names of the parties
11 to the merger or the share exchange; (2) the name of the corporation
12 that will be the survivor of the merger or that will acquire the shares of
13 the other party to the share exchange; (3) the date on which the merger
14 or the share exchange is to be effective; (4) if the certificate of
15 incorporation of the survivor of a merger is amended, or if a new
16 corporation is created as a result of a merger, the amendments to the
17 survivor's certificate of incorporation or the certificate of incorporation
18 of the new corporation; (5) if the plan of merger or share exchange
19 required approval by the shareholders of a domestic corporation that

20 was a party to the merger or the share exchange, a statement that the
21 plan was duly approved by the shareholders and, if voting by any
22 separate voting group was required, by each such separate voting
23 group, in the manner required by sections 33-600 to 33-998, inclusive,
24 and the certificate of incorporation; (6) if the plan of merger or share
25 exchange did not require approval by the shareholders of a domestic
26 corporation that was a party to the merger or the share exchange, a
27 statement to that effect; and (7) as to each foreign corporation that was
28 a party to the merger or the share exchange, a statement that the plan
29 and the performance of its terms were duly authorized by all action
30 required by the law of the state or country under which the
31 corporation is organized or by which it is governed, and by its
32 certificate of incorporation.

33 Sec. 2. Subsection (b) of section 34-193 of the 2012 supplement to the
34 general statutes, as amended by section 46 of public act 11-241, is
35 repealed and the following is substituted in lieu thereof (*Effective*
36 *January 1, 2014*):

37 (b) A limited liability company organized under sections 34-100 to
38 34-242, inclusive, to render professional services may merge or
39 consolidate only with another domestic limited liability company
40 organized under said sections if such other company is organized to
41 render the same professional service. A merger or consolidation of a
42 limited liability company organized under sections 34-100 to 34-242,
43 inclusive, to render professional services with any foreign limited
44 liability company or foreign other entity is prohibited.

45 Sec. 3. Subsection (b) of section 34-608 of the 2012 supplement to the
46 general statutes is repealed and the following is substituted in lieu
47 thereof (*Effective January 1, 2014*):

48 (b) This chapter shall not be used to effect a transaction that (1)
49 involves any entity referenced in subsection (a) of this section, [or] (2)
50 is a conversion, merger, consolidation, interest exchange, division or
51 any other transaction governed by this chapter between or among

52 entities of the same type, or (3) is a conversion, merger, consolidation,
53 interest exchange, division or other transaction governed by sections
54 34-600 to 34-646, inclusive, involving a domestic entity organized to
55 render professional services unless the transaction involves another
56 domestic entity organized to render the same professional service,
57 except as otherwise permitted by the laws of this state.

58 Sec. 4. Subsection (c) of section 34-621 of the 2012 supplement to the
59 general statutes is repealed and the following is substituted in lieu
60 thereof (*Effective January 1, 2014*):

61 (c) If a protected agreement contains a provision that applies to a
62 merger of a domestic entity but does not refer to an interest exchange,
63 such provision shall apply to an interest exchange in which the
64 domestic entity is the acquired entity as if the interest exchange were a
65 merger until such time after [October 1, 2011] January 1, 2014, as the
66 provision is amended.

67 Sec. 5. Subsection (c) of section 34-631 of the 2012 supplement to the
68 general statutes is repealed and the following is substituted in lieu
69 thereof (*Effective January 1, 2014*):

70 (c) If a protected agreement contains a provision that applies to a
71 merger of a domestic entity but does not refer to a conversion, such
72 provision shall apply to a conversion of the entity as if the conversion
73 were a merger until such time after [October 1, 2011] January 1, 2014,
74 as the provision is amended.

75 Sec. 6. Subsection (d) of section 34-641 of the 2012 supplement to the
76 general statutes is repealed and the following is substituted in lieu
77 thereof (*Effective January 1, 2014*):

78 (d) If a protected agreement contains a provision that applies to a
79 merger of a domestic entity but does not refer to a domestication, the
80 provision shall apply to a domestication of the entity as if the
81 domestication were a merger until such time after [October 1, 2011]
82 January 1, 2014, as the provision is amended.

83 Sec. 7. Subdivision (1) of section 22a-134 of the 2012 supplement to
84 the general statutes, as amended by section 53 of public act 11-241, is
85 repealed and the following is substituted in lieu thereof (*Effective*
86 *January 1, 2014*):

87 (1) "Transfer of establishment" means any transaction or proceeding
88 through which an establishment undergoes a change in ownership, but
89 does not mean:

90 (A) Conveyance or extinguishment of an easement;

91 (B) Conveyance of an establishment through a foreclosure, as
92 defined in subsection (b) of section 22a-452f, foreclosure of a municipal
93 tax lien or through a tax warrant sale pursuant to section 12-157, an
94 exercise of eminent domain pursuant to section 8-128, 8-169e or 8-193
95 or by condemnation pursuant to section 32-224 or purchase pursuant
96 to a resolution by the legislative body of a municipality authorizing the
97 acquisition through eminent domain for establishments that also meet
98 the definition of a brownfield, as defined in section 32-9kk, or a
99 subsequent transfer by such municipality that has foreclosed on the
100 property, foreclosed municipal tax liens or that has acquired title to the
101 property through section 12-157, or is within the pilot program
102 established in subsection (c) of section 32-9cc, or has acquired such
103 property through the exercise of eminent domain pursuant to section
104 8-128, 8-169e or 8-193 or by condemnation pursuant to section 32-224
105 or a resolution adopted in accordance with this subparagraph,
106 provided (i) the party acquiring the property from the municipality
107 did not establish, create or contribute to the contamination at the
108 establishment and is not affiliated with any person who established,
109 created or contributed to such contamination or with any person who
110 is or was an owner or certifying party for the establishment, and (ii) on
111 or before the date the party acquires the property from the
112 municipality, such party or municipality enters and subsequently
113 remains in the voluntary remediation program administered by the
114 commissioner pursuant to section 22a-133x and remains in compliance
115 with schedules and approvals issued by the commissioner. For

116 purposes of this subparagraph, subsequent transfer by a municipality
117 includes any transfer to, from or between a municipality, municipal
118 economic development agency or entity created or operating under
119 chapter 130 or 132, a nonprofit economic development corporation
120 formed to promote the common good, general welfare and economic
121 development of a municipality that is funded, either directly or
122 through in-kind services, in part by a municipality, or a nonstock
123 corporation or limited liability company controlled or established by a
124 municipality, municipal economic development agency or entity
125 created or operating under chapter 130 or 132;

126 (C) Conveyance of a deed in lieu of foreclosure to a lender, as
127 defined in and that qualifies for the secured lender exemption
128 pursuant to subsection (b) of section 22a-452f;

129 (D) Conveyance of a security interest, as defined in subdivision (7)
130 of subsection (b) of section 22a-452f;

131 (E) Termination of a lease and conveyance, assignment or execution
132 of a lease for a period less than ninety-nine years including
133 conveyance, assignment or execution of a lease with options or similar
134 terms that will extend the period of the leasehold to ninety-nine years,
135 or from the commencement of the leasehold, ninety-nine years,
136 including conveyance, assignment or execution of a lease with options
137 or similar terms that will extend the period of the leasehold to ninety-
138 nine years, or from the commencement of the leasehold;

139 (F) Any change in ownership approved by the Probate Court;

140 (G) Devolution of title to a surviving joint tenant, or to a trustee,
141 executor or administrator under the terms of a testamentary trust or
142 will, or by intestate succession;

143 (H) Corporate reorganization not substantially affecting the
144 ownership of the establishment;

145 (I) The issuance of stock or other securities of an entity which owns

146 or operates an establishment;

147 (J) The transfer of stock, securities or other ownership interests
148 representing less than forty per cent of the ownership of the entity that
149 owns or operates the establishment;

150 (K) Any conveyance of an interest in an establishment where the
151 transferor is the sibling, spouse, child, parent, grandparent, child of a
152 sibling or sibling of a parent of the transferee;

153 (L) Conveyance of an interest in an establishment to a trustee of an
154 inter vivos trust created by the transferor solely for the benefit of one
155 or more siblings, spouses, children, parents, grandchildren, children of
156 a sibling or siblings of a parent of the transferor;

157 (M) Any conveyance of a portion of a parcel upon which portion no
158 establishment is or has been located and upon which there has not
159 occurred a discharge, spillage, uncontrolled loss, seepage or filtration
160 of hazardous waste, provided either the area of such portion is not
161 greater than fifty per cent of the area of such parcel or written notice of
162 such proposed conveyance and an environmental condition
163 assessment form for such parcel is provided to the commissioner sixty
164 days prior to such conveyance;

165 (N) Conveyance of a service station, as defined in subdivision (5) of
166 this section;

167 (O) Any conveyance of an establishment which, prior to July 1, 1997,
168 had been developed solely for residential use and such use has not
169 changed;

170 (P) Any conveyance of an establishment to any entity created or
171 operating under chapter 130 or 132, or to an urban rehabilitation
172 agency, as defined in section 8-292, or to a municipality under section
173 32-224, or to the Connecticut Development Authority or any
174 subsidiary of the authority;

175 (Q) Any conveyance of a parcel in connection with the acquisition of

176 properties to effectuate the development of the overall project, as
177 defined in section 32-651;

178 (R) The conversion of a general or limited partnership to a limited
179 liability company;

180 ~~[(R)]~~ (S) The transfer of general partnership property held in the
181 names of all of its general partners to a general partnership which
182 includes as general partners immediately after the transfer all of the
183 same persons as were general partners immediately prior to the
184 transfer;

185 ~~[(S)]~~ (T) The transfer of general partnership property held in the
186 names of all of its general partners to a limited liability company
187 which includes as members immediately after the transfer all of the
188 same persons as were general partners immediately prior to the
189 transfer;

190 ~~[(T)]~~ (U) Acquisition of an establishment by any governmental or
191 quasi-governmental condemning authority;

192 ~~[(U)]~~ (V) Conveyance of any real property or business operation that
193 would qualify as an establishment solely as a result of (i) the
194 generation of more than one hundred kilograms of universal waste in
195 a calendar month, (ii) the storage, handling or transportation of
196 universal waste generated at a different location, or (iii) activities
197 undertaken at a universal waste transfer facility, provided any such
198 real property or business operation does not otherwise qualify as an
199 establishment; there has been no discharge, spillage, uncontrolled loss,
200 seepage or filtration of a universal waste or a constituent of universal
201 waste that is a hazardous substance at or from such real property or
202 business operation; and universal waste is not also recycled, treated,
203 except for treatment of a universal waste pursuant to 40 CFR
204 273.13(a)(2) or (c)(2) or 40 CFR 273.33 (a)(2) or (c)(2), or disposed of at
205 such real property or business operation; [or]

206 ~~[(V)]~~ (W) Conveyance of a unit in a residential common interest

207 community in accordance with section 22a-134i;

208 (X) Acquisition of an establishment that is in the abandoned
209 brownfield cleanup program established pursuant to section 32-9ll and
210 all subsequent transfers of the establishment, provided the
211 establishment is undergoing remediation or is remediated in
212 accordance with subsection (g) of said section 32-9ll;

213 (Y) Any transfer of title from a bankruptcy court or a municipality
214 to a nonprofit organization; or

215 (Z) Acquisition of an establishment that is in the brownfield
216 remediation and revitalization program and all subsequent transfers of
217 the establishment, provided the establishment is in compliance with
218 the brownfield investigation plan and remediation schedule, the
219 commissioner has issued a no audit letter or successful audit closure
220 letter in response to a verification or interim verification submitted
221 regarding the remediation of such establishment under the brownfield
222 remediation and revitalization program, or a one-hundred-eighty-day
223 period has expired since a verification or interim verification
224 submitted regarding the remediation of such establishment under the
225 brownfield remediation and revitalization program without an audit
226 decision from the Commissioner of Energy and Environmental
227 Protection.

228 Sec. 8. Section 33-640 of the general statutes is repealed and the
229 following is substituted in lieu thereof (*Effective October 1, 2012*):

230 (a) The incorporators or board of directors of a corporation shall
231 adopt initial bylaws for the corporation.

232 (b) The bylaws of a corporation may contain any provision [for
233 managing the business and regulating the affairs of the corporation]
234 that is not inconsistent with law or the certificate of incorporation.

235 (c) The bylaws may contain one or both of the following provisions:

236 (1) A requirement that if the corporation solicits proxies or consents

237 with respect to an election of directors, the corporation include in its
238 proxy statement and any form of its proxy or consent, to the extent and
239 subject to such procedures or conditions as are provided in the bylaws,
240 one or more individuals nominated by a shareholder in addition to
241 individuals nominated by the board of directors; and

242 (2) A requirement that the corporation reimburse the expenses
243 incurred by a shareholder in soliciting proxies or consents in
244 connection with an election of directors, to the extent and subject to
245 such procedures or conditions as are provided in the bylaws, provided
246 that no bylaw so adopted shall apply to elections for which any record
247 date precedes its adoption.

248 (d) Notwithstanding subdivision (2) of subsection (b) of section 33-
249 806, as amended by this act, the shareholders in amending, repealing
250 or adopting a bylaw described in subsection (c) of this section may not
251 limit the authority of the board of directors to amend or repeal any
252 condition or procedure set forth in or to add any procedure or
253 condition to such a bylaw in order to provide for a reasonable,
254 practicable and orderly process.

255 Sec. 9. Section 33-806 of the general statutes is repealed and the
256 following is substituted in lieu thereof (*Effective October 1, 2012*):

257 (a) A corporation's shareholders may amend or repeal the
258 corporation's bylaws.

259 (b) A corporation's board of directors may amend or repeal the
260 corporation's bylaws unless: (1) The certificate of incorporation, section
261 33-808 or, if applicable, section 33-809 reserves that power exclusively
262 to the shareholders in whole or part; or (2) except as provided in
263 subsection (d) of section 33-640, as amended by this act, the
264 shareholders in amending, repealing or adopting a bylaw expressly
265 provide that the board of directors may not amend, repeal or reinstate
266 that bylaw.

267 Sec. 10. Section 33-778 of the general statutes is repealed and the

268 following is substituted in lieu thereof (*Effective October 1, 2012*):

269 (a) A corporation may, by a provision in its certificate of
270 incorporation or bylaws or in a resolution adopted or a contract
271 approved by its board of directors or shareholders, obligate itself in
272 advance of the act or omission giving rise to a proceeding to provide
273 indemnification in accordance with section 33-771 or advance funds to
274 pay for or reimburse expenses in accordance with section 33-773. Any
275 such obligatory provision shall be deemed to satisfy the requirements
276 for authorization referred to in subsection (c) of section 33-773 and
277 subsection (c) of section 33-775. Any such provision that obligates the
278 corporation to provide indemnification to the fullest extent permitted
279 by law shall be deemed to obligate the corporation to advance funds to
280 pay for or reimburse expenses in accordance with section 33-773 to the
281 fullest extent permitted by law, unless the provision specifically
282 provides otherwise.

283 (b) A right of indemnification or to advances for expenses created
284 by this subpart or under subsection (a) of this section and in effect at
285 the time of an act or omission shall not be eliminated or impaired with
286 respect to such act or omission by an amendment of the certificate of
287 incorporation or bylaws or a resolution of the directors or
288 shareholders, adopted after the occurrence of such act or omission,
289 unless, in the case of a right created under subsection (a) of this
290 section, the provision creating such right and in effect at the time of
291 such act or omission explicitly authorizes such elimination or
292 impairment after such act or omission has occurred.

293 [(b)] (c) Any provision pursuant to subsection (a) of this section
294 shall not obligate the corporation to indemnify or advance expenses to
295 a director of a predecessor of the corporation, pertaining to conduct
296 with respect to the predecessor, unless otherwise specifically provided.
297 Any provision for indemnification or advance for expenses in the
298 certificate of incorporation, bylaws or resolution of the board of
299 directors or shareholders of a predecessor of the corporation in a
300 merger or in a contract to which the predecessor is a party, existing at

301 the time the merger takes effect, shall be governed by subdivision (3)
302 of subsection (a) of section 33-820.

303 [(c) A] (d) Subject to subsection (b) of this section, a corporation
304 may, by a provision in its certificate of incorporation, limit any of the
305 rights to indemnification or advance for expenses created by or
306 pursuant to sections 33-770 to 33-779, inclusive, as amended by this
307 act.

308 [(d)] (e) Sections 33-770 to 33-779, inclusive, as amended by this act,
309 do not limit a corporation's power to pay or reimburse expenses
310 incurred by a director in connection with his appearance as a witness
311 in a proceeding at a time when he is not a party.

312 Sec. 11. Section 33-709 of the general statutes is amended by adding
313 subsection (f) as follows (*Effective October 1, 2012*):

314 (NEW) (f) Whenever a provision of sections 33-600 to 33-998,
315 inclusive, as amended by this act, provides for voting of classes or
316 series as separate voting groups, the rules provided in subsection (c) of
317 section 33-798 for amendments of the certificate of incorporation apply
318 to that provision.

319 Sec. 12. Subsection (a) of section 33-798 of the general statutes is
320 repealed and the following is substituted in lieu thereof (*Effective*
321 *October 1, 2012*):

322 (a) If a corporation has more than one class of shares outstanding,
323 the holders of the outstanding shares of a class are entitled to vote as a
324 separate voting group, if shareholder voting is otherwise required by
325 sections 33-600 to 33-998, inclusive, as amended by this act, on a
326 proposed amendment to the certificate of incorporation if the
327 amendment would:

328 (1) Effect an exchange or reclassification of all or part of the shares
329 of the class into shares of another class;

330 (2) Effect an exchange or reclassification, or create the right of

331 exchange, of all or part of the shares of another class into shares of the
332 class;

333 (3) Change the rights, preferences or limitations of all or part of the
334 shares of the class;

335 (4) Change the shares of all or part of the class into a different
336 number of shares of the same class;

337 (5) Create a new class of shares having rights or preferences with
338 respect to distributions [or to dissolution] that are prior or superior to
339 the shares of the class;

340 (6) Increase the rights, preferences or number of authorized shares
341 of any class that, after giving effect to the amendment, have rights or
342 preferences with respect to distributions [or to dissolution] that are
343 prior or superior to the shares of the class;

344 (7) Limit or deny an existing preemptive right of all or part of the
345 shares of the class; or

346 (8) Cancel or otherwise affect rights to distributions that have
347 accumulated but not yet been authorized on all or part of the shares of
348 the class.

349 Sec. 13. Subsections (a) and (b) of section 33-856 of the 2012
350 supplement to the general statutes are repealed and the following is
351 substituted in lieu thereof (*Effective October 1, 2012*):

352 (a) A shareholder is entitled to appraisal rights, and to obtain
353 payment of the fair value of that shareholder's shares, in the event of
354 any of the following corporate actions:

355 (1) Consummation of a merger to which the corporation is a party
356 (A) if shareholder approval is required for the merger by section 33-
357 817 and the shareholder is entitled to vote on the merger, except that
358 appraisal rights shall not be available to any shareholder of the
359 corporation with respect to shares of any class or series that remain

360 outstanding after consummation of the merger, or (B) if the
361 corporation is a subsidiary and the merger is governed by section 33-
362 818;

363 (2) Consummation of a share exchange to which the corporation is a
364 party as the corporation whose shares will be acquired, if the
365 shareholder is entitled to vote on the exchange, except that appraisal
366 rights shall not be available to any shareholder of the corporation with
367 respect to any class or series of shares of the corporation that is not
368 exchanged;

369 (3) Consummation of a disposition of assets pursuant to section 33-
370 831 if the shareholder is entitled to vote on the disposition, except that
371 appraisal rights shall not be available to any shareholder of the
372 corporation with respect to shares of any class or series if (A) under the
373 terms of the corporate action approved by the shareholders there is to
374 be distributed to shareholders in cash its net assets, in excess of a
375 reasonable amount reserved to meet claims of the type described in
376 sections 33-886 and 33-887, (i) within one year after the shareholders'
377 approval of the action, and (ii) in accordance with their respective
378 interests determined at the time of such distribution, and (B) the
379 disposition of assets is not an interested transaction;

380 (4) An amendment of the certificate of incorporation with respect to
381 a class or series of shares that reduces the number of shares of a class
382 or series owned by the shareholder to a fraction of a share if the
383 corporation has the obligation or right to repurchase the fractional
384 share so created; or

385 (5) Any other merger, share exchange, disposition of assets or
386 amendment to the certificate of incorporation to the extent provided by
387 the certificate of incorporation, the bylaws or a resolution of the board
388 of directors.

389 (b) Notwithstanding subsection (a) of this section, the availability of
390 appraisal rights under subdivisions (1), (2), (3) and (4) of subsection (a)
391 of this section shall be limited in accordance with the following

392 provisions:

393 (1) Appraisal rights shall not be available for the holders of shares of
394 any class or series of shares which is:

395 (A) A covered security under Section 18(b)(1)(A) or (B) of the
396 Securities Act of 1933, as amended;

397 (B) Traded in an organized market and has at least two thousand
398 shareholders and a market value of at least twenty million dollars,
399 exclusive of the value of such shares held by the corporation's
400 subsidiaries, senior executives, directors and beneficial shareholders
401 owning more than ten per cent of such shares; or

402 (C) Issued by an open-end management investment company
403 registered with the Securities and Exchange Commission under the
404 Investment Company Act of 1940 and may be redeemed at the option
405 of the holder at net asset value.

406 (2) The applicability of subdivision (1) of this subsection shall be
407 determined as of: (A) The record date fixed to determine the
408 shareholders entitled to receive notice of the meeting of shareholders
409 to act upon the corporate action requiring appraisal rights; or (B) the
410 day before the effective date of such corporate action if there is no
411 meeting of shareholders.

412 (3) Subdivision (1) of this subsection shall not be applicable and
413 appraisal rights shall be available pursuant to subsection (a) of this
414 section for the holders of any class or series of shares (A) who are
415 required by the terms of the corporate action requiring appraisal rights
416 to accept for such shares anything other than cash or shares of any
417 class or any series of shares of any corporation, or any other
418 proprietary interest of any other entity, that satisfies the standards set
419 forth in subdivision (1) of this subsection at the time the corporate
420 action becomes effective, or (B) in the case of the consummation of a
421 disposition of assets pursuant to section 33-831, unless such cash,
422 shares or proprietary interests are, under the terms of the corporate

423 action approved by the shareholders, to be distributed to the
 424 shareholders, as part of a distribution to shareholders of the net assets
 425 of the corporation in excess of a reasonable amount to meet claims of
 426 the type described in sections 33-886 and 33-887, (i) not later than one
 427 year after the shareholders' approval of the action, and (ii) in
 428 accordance with their respective interests determined at the time of the
 429 distribution.

430 (4) Subdivision (1) of this subsection shall not be applicable and
 431 appraisal rights shall be available pursuant to subsection (a) of this
 432 section for the holders of any class or series of shares where the
 433 corporate action is an interested transaction.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2014</i>	33-819(a)
Sec. 2	<i>January 1, 2014</i>	34-193(b)
Sec. 3	<i>January 1, 2014</i>	34-608(b)
Sec. 4	<i>January 1, 2014</i>	34-621(c)
Sec. 5	<i>January 1, 2014</i>	34-631(c)
Sec. 6	<i>January 1, 2014</i>	34-641(d)
Sec. 7	<i>January 1, 2014</i>	22a-134(1)
Sec. 8	<i>October 1, 2012</i>	33-640
Sec. 9	<i>October 1, 2012</i>	33-806
Sec. 10	<i>October 1, 2012</i>	33-778
Sec. 11	<i>October 1, 2012</i>	33-709
Sec. 12	<i>October 1, 2012</i>	33-798(a)
Sec. 13	<i>October 1, 2012</i>	33-856(a) and (b)

BA *Joint Favorable Subst.*